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11  
12 **IN THE U.S. DISTRICT COURT**  
13  
14 **DISTRICT OF ARIZONA**

15 Martha Winkler a single woman,

16 Plaintiffs,

17 vs.

18 City of Phoenix, a public entity; Officer  
19 Jason Gillespie individually and in his official  
20 capacity as a police officer for Phoenix Police;

21 Defendants.

22 Case No. CV-15-01786-PGR

23 **2ND AMENDED COMPLAINT**

24 **TORT – NEGLIGENCE, EXCESSIVE  
25 USE OF FORCE AND VIOLATIONS  
OF CIVIL RIGHTS AND DAMAGES**

26 **JURY TRIAL DEMANDED**

17 Plaintiff, for her complaint, alleges and states the following:

18 **COMPLAINT**

19 Plaintiff Martha Winkler, for her Complaint against Defendants, hereby allege as  
20 follows:

21 **JURISDICTION & VENUE**

22 1. Plaintiff brings this action pursuant to A.R.S. § 13-3881 *et seq.*, EXCESSIVE  
23 USE OF FORCE; 42 U.S.C. § 1983; the Fourth, and Fourteenth Amendments of the  
24 United States Constitution; and pendent state common law and statutory laws.

25 2. Plaintiff has satisfied the provisions of A.R.S. §12-821.01 by serving upon  
26 Defendants a notice of claim. Pursuant to A.R.S. §12-821.01(E), the claim is deemed  
denied because more than sixty days have elapsed without response since the date of

1 | service.

2       3.       This court has jurisdiction of Plaintiff's federal law claims pursuant to 28  
3 U.S.C. §1331 and 42 U.S.C. §1988. Additionally, this court has jurisdiction over  
Plaintiffs' state and federal claims pursuant to Article 6, §14 of the Arizona Constitution.

4. Venue is proper in this court pursuant to A.R.S. §12-401, as the defendants  
5 are residents of Maricopa County, Arizona and the events underlying this lawsuit occurred  
6 in Maricopa County.

## **Parties**

8. Plaintiffs re-allege and incorporate, by reference, their claims, facts, and allegations in the paragraphs above, as set forth fully herein.

9       6.       At all times mentioned herein, defendant Jason Gillespie ("Officer  
10      Gillespie") was an agent and employee of Phoenix Police Department. He is being sued  
11      individually and in his official capacity as a Police Officer for Phoenix Police Department.

12       7. Plaintiffs will amend the Complaint to name the unidentified individuals once  
13 the identities; acts, omissions, roles and responsibilities of such Defendants are learned  
through discovery.

## FACTUAL BASIS OF CLAIM

## Introduction

16 8. Plaintiffs re-allege and incorporate by reference the claim, facts, and  
17 allegations in the paragraphs above, as if set forth fully herein.

17. 9. On July 16, 2014, Martha Winkler, age 56 was a single grandmother. Martha  
18. lived alone and occasionally received domestic help from her daughter and son-in-law who  
19. live in the area. Martha does not drink alcohol or use drugs. Martha by nature is a very  
20. out-going, personable, kind, perpetually optimistic person, and friendly lady. She is a  
21. "lover of life" and is expected to make a good witness on her own behalf.

22. On the day in question Martha drove to a Circle K store located at the S.E.  
corner of Bethany Home Road and 7<sup>th</sup> Street. Martha intended to buy \$3 worth of lottery  
23 tickets, but the store clerk incorrectly took Martha's order. After thinking that the Store  
24 clerks were taking advantage of her and would-be customers Martha attempted to speak  
25 with the off-site manager via telephone. The off-site manager refused to help Martha so  
she called 911 for assistance. Martha waited for over an hour for police assistance.

1 11. Officer Gillespie responded to Martha 911 call. However, upon arrival,  
 2 Officer Gillespie seemed irritated and loudly shouted at Martha "what's this all about?"  
 3 Surprised by Officer Gillespie's upset demeanor, Martha was silent and confused due to  
 4 the fact that she placed the call for help. Officer Gillespie asked for Martha's identification,  
 she complied and then he walked into the store.

5 12. After a very short period Officer Gillespie exited the store and began  
 6 screaming at Martha for calling 911 "ten times." Feeling threatened, Martha never raised  
 7 her voice, cursed or physically or verbally threatened the Officer Gillespie. However,  
 8 Martha did ask for Officer Gillespie to call his supervisor. When Officer Gillespie refused  
 to call his supervisor Martha told Officer Gillespie she was going to call 911.

9 13. Officer Gillespie approached Martha in an aggressive manner, which caused  
 10 her to back up. Martha kept her hands out and up in front of her to show the officer that  
 11 except for her cell phone, she was not armed with any weapons. Martha was in fear that  
 12 Officer Gillespie was going to arrest her however, she rebuffed Officer Gillespie's  
 13 allegation stating she was not trespassed by the store employees. She also stated she was  
 14 a customer that purchased lottery tickets. Officer Gillespie asked Martha to put down her  
 cell phone presumably because she was trying to record the altercation.

15 Damages

16 14. Without any notice Officer Gillespie grabbed Martha and violently twisted her  
 17 arms behind her back. Martha's last memory is of Officer Gillespie pushing her forward.

18 15. Upon waking up in the Hospital, Martha was told she had been a victim of an  
 assault.

19 16. Due to Officer Gillespie's actions, Martha presented to the hospital with the  
 20 following injuries, a 2.5 cm laceration on her upper right forehead at and slightly above the  
 21 hairline. She received eight (8) sutures of 5-0 prolene were used to close the wound. She  
 22 also had an abrasion on her right check, closer to her right ear than midline. A CAT scan of  
 23 Marti's head showed a right orbital fracture (right eye socket structure) and a right occipital  
 24 skull fracture (lowest rear and to the right skull plate). The CAT scan of Marti's head also  
 objectively showed the presence of bilateral nasal fractures.

25 17. The CAT of Martha's head confirmed that she also had "an acute presence of  
 26 a subdural hematoma" in the front lobe area.

1 18. Martha, suffered a total of four (4) different fractures to her skull.  
 2 19. Due to this incident Martha suffers from bouts of depression, suicidal thoughts  
 3 and paranoia.

4 **FIRST CLAIM FOR RELIEF**  
 5 **Gross Negligence—City of Phoenix**

6 20. Plaintiff re-allege and incorporate by reference the claims, facts and  
 7 allegations in the paragraphs above as if set forth fully herein.

8 21. Officer Gillespie is an employee of the City of Phoenix who did negligently  
 9 willfully and with a wanton and reckless disregard for Martha's safety, and with full  
 10 knowledge that by his conduct, the City of Phoenix exposed Martha to serious harm and  
 11 Officer Gillespie wantonly and recklessly disregarded the probability of consequences to  
 12 Martha of his conduct. By reason of the assault by a City of Phoenix employee, and as a  
 13 direct and proximate result of such assault, Martha sustained serious and permanent bodily  
 14 injuries, and suffered and will forever suffer great mental and physical pain.

15 22. As a further direct and proximate result of the assault by Officer Gillespie, an  
 16 employee of defendant City of Phoenix, Martha has and will continue to incur expenses for  
 17 medical care and treatment and has lost income and has had his earning capacity  
 18 permanently impaired.

19 **SECOND CLAIM FOR RELIEF**

20 **The City of Phoenix Violated 42 U.S.C. § 1983 for its Unconstitutional Policies,  
 21 Customs, and Failure to Properly Screen, Hire, Train, Retain, and Supervise its  
 22 Officers**

23 23. Plaintiff re-allege and incorporate by reference the claims, facts and  
 24 allegations in the paragraphs above as if set forth fully herein.

25 24. The City of Phoenix, in its individual capacity, was responsible for the  
 26 training, supervision or control of Officer Gillespie.

27 25. The City of Phoenix had independent knowledge of Officer Gillespie's prior  
 28 history - specifically, that Officer Gillespie has a history of neglecting his duties and  
 29 displaying belligerent attitudes towards victims of crimes and other citizens.

30 26. Despite knowledge of Officer Gillespie's propensity to become aggressive  
 31 with citizens and neglecting his duties, defendant City of Phoenix kept Officer Gillespie on  
 32 duty without adequate supervision that, in essence, caused repetition of his violent

1 propensity to employ of excessive force causing Martha's injuries.

2 27. The City of Phoenix showed deliberate indifference by placing Officer  
3 Gillespie in a position within which his conduct could lead to excessive force, and thus  
4 provided inadequate supervision that resulted in Martha's injuries.

5 28. The City of Phoenix with knowledge of his prior professional history,  
6 negligently controlled Officer Gillespie by placing him on duty, and thereby created the  
dangerous conditions that resulted in Martha's injuries.

7 **THIRD CLAIM FOR RELIEF**

8 **(Officer Gillespie Violated Ms. Castillo's Right Under the Fourth Amendment  
and 42 U.S.C § 1983 to be Free From Unlawful Search and Seizures)**

9 29. Plaintiff re-allege and incorporate by reference the claims, facts and  
10 allegations in the paragraphs above as if set forth fully herein.

11 30. Plaintiff's action is brought pursuant to 42 U.S.C. 1983, and the Fourth  
12 Amendments of the United States Constitution.

13 31. On or about July 16, 2014, Martha possessed the right, guaranteed by the  
14 Fourth Amendment of the United States Constitution, to be free from unreasonable seizures  
15 and excessive use of force by police officers. Defendant, Officer Gillespie without  
16 probable cause or the consent of plaintiff, and without a duly authorized arrest warrant,  
17 arrested Martha, slammed her hard to the concrete ground, assaulted and battered Martha's  
body, wrists, head and face and used excessive force. Officer Gillespie arrested Martha  
without probable cause on a fabricated charge of trespassing.

18 32. Before Assaulting Martha, Officer Gillespie alleged in his police report that  
19 the clerks working at Circle K wanted her trespassed. This statement is untrue. In reality,  
20 Martha's was the only one to call to police for assistance. Moreover, for over forty  
21 minutes while waiting for a responding officer, Martha was allowed to wait inside the  
22 store. Thus, Martha did not violate any laws. Furthermore, upon the arrival of Officer  
23 Gillespie, Martha did not attempt to interfere with his execution of his duties, and was not  
24 engaged in any assaultive behavior toward Officer Gillespie or any other person or persons.

25 33. Officer Gillespie acted specifically with the intent to deprive Martha of the  
26 following rights under the United States Constitution:

a) Freedom from unreasonable seizures, in the form of excessive use of

1 force by police officers,

2 b) Freedom from a deprivation of liberty without due process of law;

3 34. Officer Gillespie, subjected Martha to the aforementioned deprivations with  
4 either actual malice or with deliberate indifference to the violation of Martha's  
5 constitutional rights.

6 35. As a direct and proximate result of the aforementioned acts of defendants,  
7 and each of them, Martha Winkler suffered injuries to her wrists, body, head, and face and  
8 person, and was illegally arrested on a fabricated charge.

9 36. The aforementioned acts of the Officer Gillespie were willful, wanton,  
10 malicious and oppressive thereby justifying the awarding of exemplary and punitive  
11 damages as to each of these individual defendants.

12 **FOURTH CLAIM FOR RELIEF**

13 **Officer Gillespie Violated Ms. Castillo's Rights under the Fourth Amendment  
14 and 42 U.S.C. §1983 to be Free from the Unreasonable Use of Force**

15 37. Plaintiff re-allege and incorporate by reference the claims, facts and  
16 allegations in the paragraphs above as if set forth fully herein.

17 38. Officer Gillespie owed a duty to Martha to act as a reasonable and prudent  
18 law enforcement officer, he breached that duty as set forth above, and as a result of that  
19 breach caused personal injury and damage to Marti

20 39. Officer Gillespie's use of force was objectively unreasonable given the  
21 circumstances and facts.

22 40. The nature of these actions was so extreme and outrageous that an award of  
23 punitive damages is warranted.

24 41. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff  
25 has suffered damages.

26 WHEREFORE, plaintiffs pray for relief as hereinafter set forth.

27 **JURY TRIAL**

28 42. Plaintiffs hereby request and demand a trial by jury.

29 **PRAYER FOR RELIEF**

1 WHEREFORE, Plaintiffs pray for damages for judgment against Defendants as  
2 follows:

3 a) General damages in an amount to be proven at trial, as to the causes of action,  
4 claims, and theories of relief alleged herein;

5 b) Punitive damages in an amount deemed just and reasonable against Defendants,  
6 Gillespie as to the causes of action, claims, and theories of relief alleged herein;

7 c) Costs and attorneys' fees against all Defendants as to the causes of action, claims,  
8 and theories of relief alleged herein under the Constitution and laws of the United States,  
9 pursuant to 42 U.S.C. §1988;

10 d) Economic and non-economic damages for Ms. Martha Winkler pursuant to  
11 applicable Arizona and federal law;

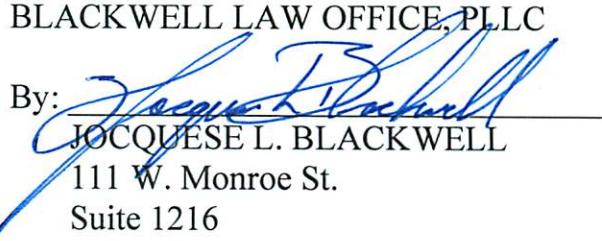
12 f) Litigation costs;

13 g) All remedies provided by 42 U.S.C. § 1983; and

14 h) Such other and further relief, which may seem just and reasonable under the  
15 circumstances.

16 RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of October 2015.

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